

Common Sense
Initiative

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Business Impact Analysis

Agency Name: Ohio Department of Insurance

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Regulation/Package Title (a general description of the rules' substantive content):
Health insurance reserves, Corporate governance annual disclosure, and
Annuity nonforfeiture product standards.

Rule Number(s): 3901-3-13, 3901-3-19, 3901-6-16

Date of Submission for CSI Review: August 2, 2021

Public Comment Period End Date: August 16, 2021 12:00AM

Rule Type/Number of Rules:☒ New/ **1** rules☒ No Change/ **1** rules (FYR? **2021**)☒ Amended/ **1** rules (FYR? **2021**)☒ Rescinded/ **1** rules (FYR? **2021**)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Reason for Submission

1. R.C. 106.03 and 106.031 requires agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

Which adverse impact(s) to businesses has the Agency determined the rule(s) create?

The rule(s):

- ☐ a. Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- ☐ b. Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- ☒ c. Requires specific expenditures or the report of information as a condition of compliance.
- ☐ d. Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

Regulatory Intent

2. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

Rule 3901-3-13: The purpose of this rule is to establish the minimum reserve standards for all individual and group health insurance coverages, including single premium credit disability insurance, as required by division (Q) of section 3903.723 of the Revised Code. Minimum reserve requirements establish one standard of maintaining solvency for health insurance companies. The National Association of Insurance Commissioners (NAIC) evaluates market trends and industry standards to develop appropriate minimum benchmarks for companies to maintain. These minimum requirements are then reviewed nationally by both industry stakeholders and regulators, and adopted into a national model. Recommended amendments to this rule will incorporate the latest version of the NAIC model. Updates to the model do not implement new requirements, but rather provide the updated standards for recent plan years, and those moving forward. Due to the amount of proposed amendments the rule will be filed as rescind, and ultimately filed as a new rule.

Rule 3901-3-19: Corporate governance is the system of rules, practices, and processes by which an insurance company governs itself. Ohio Revised Code sections 3901.072 to 3901.078 requires that insurers submit an annual disclosure to the superintendent, detailing specific information related to individual corporate governance practices. The purpose of this rule is to establish the required content, and procedures for filing the annual disclosure. The proposed amendment to this rule is technical and will correct a citation.

Rule 3901-6-16: The purpose of this rule is to amplify Ohio Revised Code by defining the maturity date used for the purpose of calculating nonforfeiture values for annuity contracts. The rule implements what is commonly referred to as the "70/10 Rule" which limits the duration of an annuity to 10 years or age 70, whichever is greater. There are no proposed amendments to this rule.

3. Please list the Ohio statute(s) that authorize the Agency to adopt the rule(s) and the statute(s) that amplify that authority.

Rule 3901-3-13: Sections 3901.041 and 3903.723(Q) of the Revised code.

Rule 3901-3-19: Sections 3901.77 and 3901.041 of the Revised code.

Rule 3901-6-16: Sections 3901.041 and 3901.21 of the Revised code.

4. Does the regulation implement a federal requirement? ☐ Yes ☒ No
Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?
☐ Yes ☒ No

If yes, please briefly explain the source and substance of the federal requirement.

Not applicable.

5. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Not applicable.

6. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

Rule 3901-3-13: Implementing the NAIC model for minimum reserve standards promotes insurer solvency, which is crucial to the protection of the company, consumers, and the overall insurance market.

Rule 3901-3-19: Corporate governance addresses the allocation and regulation of power and accountabilities within an insurer and avoids undue concentration of authority and power. Also, corporate governance has to be transparent and have appropriate systems, controls, and limits to ensure the given authority and power is used to protect the interests of all of the insurance company's stakeholders.

Rule 3901-6-16: The purpose for this rule is to provide consumer protection, especially to senior citizens when purchasing annuity products. This regulation is specifically intended to prevent unreasonable surrender charges and provide reasonable access to funds.

7. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

Success is determined by reviewing trends in complaints and violations as well as the overall wellbeing of insurers; reviewed during financial and, or market conduct examinations. Success is also evident through an overall understanding of expectations set forth in these rules on behalf of the regulated community.

8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931? ☐ Yes ☒ No

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

Not applicable.

Development of the Regulation

9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation. *If applicable, please include the date and medium by which the stakeholders were initially contacted.*

In May 2021, an email requesting comment on this group of rules was sent to various stakeholders, interested parties, trade associations and companies. Specifically, the department reached out to the Ohio Land Title Association, the Ohio Insurance Institute (OII), the Association of Ohio Life Insurance Companies (AOLIC), the American Council of Life Insurance (ACLI), Ohio Association of Health Plans (OAHP) and the Ohio Insurance Agent Association Inc., among others. Additionally, these rules were also posted on the department's web site for review.

10. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

No comments were received during or after the two week comment period.

11. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

Rule 3901-3-13: The health insurance reserves NAIC model was established through extensive stakeholder and regulator outreach to determine appropriate standards based on market data and research.

Rule 3901-3-19: The NAIC developed the model CGAD act and rule, which was created and vetted through a committee process that included research and input from numerous state regulators and industry stakeholders. This was a multi-year project to study and compare existing governance requirements for U.S. insurers to establish best practices, international standards and U.S. regulatory needs.

Rule 3901-6-16: Representatives from industry and other state insurance departments worked together to develop the basics of this rule for the Interstate Insurance Product

Regulation Commission. Several other states have implemented a similar rule or statute. The department conducted extensive outreach to develop a good fit for Ohio.

12. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

Rule 3901-3-13: The NAIC works to establish national consistency across state department of insurance jurisdictions. National models establish predictability and in regards to maintaining financial reserve methods, an alternative is not appropriate.

Rule 3901-3-19: No alternative regulation was considered. The rule was specifically developed to provide detail regarding the requirements of the CGAD. The language of this model regulation was developed in conjunction with the model statute during a collaborative stakeholder process.

Rule 3901-6-16: The standards established in this rule were reached through extensive outreach and review of other states regulations. An industry standard was established to prevent adverse financial impact on senior citizens.

13. Did the Agency specifically consider a performance-based regulation? Please explain.
Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

Rule 3901-3-13 requires health insurers to follow applicable guidelines in determining a satisfactory minimum reserve.

Rule 3901-3-19: The corresponding statute, section 3901.074 of the Revised Code requires that the superintendent establish the required content of the CGAD. However, the rule was designed so the insurer has discretion regarding the appropriate format for providing the information. The insurer is permitted to customize the communication to provide the most relevant information necessary to permit the superintendent to gain an understanding of the corporate governance structure, policies and practices utilized by the insurer.

Rule 3901-6-16 requires that applicable filed products meet a specific standard. This standard ensures consumer protection and a balanced market.

14. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

The department is the sole regulator for insurance in the state of Ohio and confirmed there are no duplicate regulations.

15. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

All rules included in this package are existing and understood by the regulated community. Updates to rule 3901-3-13 have been known to insurers active with the NAIC since their adoption in 2017. Additionally, the department maintains multiple divisions that are available to assist the regulated community and consumers.

Adverse Impact to Business

16. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

- a. Identify the scope of the impacted business community;
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and
- c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.

a-c.

Rule 3901-3-13: Health insurers are required to maintain minimum reserves according to standards established in the rule. Amendments to the rule do not necessarily impose additional requirements, however will provide updated methods in determining compliance. These amendments implement the NAIC model, which has been familiar to the industry since 2017. Therefore quantifying the staff time necessary to review such amendments is unknown, but believed to be minimal.

Rule 3901-3-19: Insurers domiciled in Ohio are required to complete and submit a corporate governance annual disclosure (CGAD). Most of the information that is required to be included should already be known to the insurer and relied upon in its ongoing board and business operations. Many insurers currently summarize and describe their corporate governance practices to a number of various stakeholders on a regular basis. In addition, the disclosure requirements allow reference to existing documents and filings and provide guidance for filing changes from the prior year to simplify the reporting process. The time to complete subsequent CGADs should drop significantly as the insurer will only need to update the CGAD with any changes that occurred during the year.

Rule 3901-6-16: Insurance companies which sell applicable annuity products are required to comply with the calculation methods established in the rule. The rule remains in place without substantive amendments and therefore does not impose a quantifiable adverse impact.

17. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

Rule 3901-3-13: NAIC models establish national standards for insurers, resulting in consistency and regulatory predictability. Additionally, the rule promotes insurer solvency, which ensures consumer claims may be paid by the insurer.

Rule 3901-3-19: Through the adoption of standards in this area, the department can ensure that sufficient information on governance practices is available to assess the solvency of insurers on an annual basis.

Rule 3901-6-16: The standards established in the rule provide consumer protections for individuals, often senior citizens, whom purchase applicable annuity products.

Regulatory Flexibility

18. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

Rule 3901-3-13: The purpose of this rule is to establish the minimum reserve standards for all individual and group health insurance coverages, the rule provides the standards and applicable tables to follow given the size and needs of each entity.

Rule 3901-3-19: The insurer has discretion regarding the appropriate format for providing the information and is permitted to customize the reporting to provide the most relevant information necessary to permit the department to gain an understanding of the corporate governance structure, policies and practices utilized by the insurer. This includes a recognition by the department that smaller insurers may submit less complex CGADs and may need additional advice and guidance as to the filing requirements.

Rule 3901-6-16: Requirements established in this rule promote consumer protection and establish straight-forward business and product standards, it is crucial that they are complied with consistently across the industry.

19. How will the Agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

Paperwork violations and/or first time offender issues would be handled on a case by case basis to determine whether the violation could have a serious impact on the overall financial solvency of the insurer, or impact to consumer. Minor errors would be handled by advising the entity and providing them an opportunity to cure the omission.

20. What resources are available to assist small businesses with compliance of the regulation?

Department staff is available to assist any insurer regardless of size.